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January 4, 2005

**Via Hand Delivery**

Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re In Re BellSouth Telecommunications Company of Tennessee, LLC's  
d/b/a Frontier Communications of Tennessee  
Docket No 04-00380

Dear Chairman Miller

Enclosed for filing in the above-referenced proceeding are an original and fourteen copies of a Petition to Intervene of Citizens Telecommunications Company of Tennessee L L C d/b/a Frontier Communications of Tennessee

Should you have any questions, please do not hesitate to call

Very truly yours,

STOKES BARTHOLOMEW  
EVANS & PETREE P A



Charles W Cook, III

CWC/eu  
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>BELLSOUTH TELECOMMUNICATIONS, INC.</b>	)	<b>Docket No. 04-00380</b>
<b>TARIFF TO INTRODUCE TRANSIT TRAFFIC</b>	)	
<b>SERVICE, TARIFF NO. 20041259</b>	)	

**PETITION TO INTERVENE OF CITIZENS TELECOMMUNICATIONS  
COMPANY OF TENNESSEE, LLC d/b/a  
FRONTIER COMMUNICATIONS OF TENNESSEE**

Pursuant to TRA Rule 1220-1-1-08 and T C A §§ 4-5-310 and 65-5-201(c), Citizens Telecommunications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee ("Citizens") petitions the Tennessee Regulatory Authority (the "TRA") to intervene in the above-captioned proceeding

In support of this Petition, Citizens states as follows

1 Citizens is an incumbent local exchange carrier ("ILEC") as defined in T C A § 65-4-101, serving customers in White, Warren, Weakley, Putnam, and Cumberland counties in Tennessee. Citizens is regulated by the TRA pursuant to T C A §§ 65-4-101 and 65-4-104.

2. On or about October 15, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed the above-referenced tariff no 20041259 (the "Transit Tariff") with the TRA and requested that the Transit Tariff be effective November 5, 2004. BellSouth has since voluntarily extended the requested effective date to January 12, 2005.<sup>1</sup>

3 According to the "Executive Summary" BellSouth included with its filing with the TRA, the purpose of the tariff filing was to introduce "rates, terms, and conditions for

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<sup>1</sup> Petitions to Intervene have also been filed by (1) ATT Communications of the South Central States, LLC, MCI Metro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., NuVox Communications, Inc., US LEC of Tennessee, Inc., XO Tennessee, Inc., Xspedius Communications, LLC and Southeastern Competitive Carriers Association, filed October 29, 2004, (2) Rural Coalition of Small Local Exchange Carriers and Cooperatives, filed November 1, 2004, and (3) Sprint Communications Company, L P, filed November 11, 2004

[BellSouth's] Transit Traffic Service in the General Subscribers Services Tariff" Such traffic is defined in the tariff as "Local Traffic originating on one Telecommunications Service Provider's network that is delivered by BellSouth to a different Telecommunications Service Provider's network for termination"

4 According to the Transit Tariff, when BellSouth accepts Transit Traffic from a Telecommunications Provider, "BellSouth is not liable or responsible for payment to the terminating carrier. Such payment is the sole responsibility of the originating Telecommunications Provider." BellSouth further states that "the charges for transit service as specified in this tariff will apply unless transit service is addressed in a separate agreement between BellSouth and the originating telecommunications provider."

5 Citizens takes issue with the Transit Tariff because when a CLEC or CMRS (as defined in the Transit Tariff) is seeking to indirectly interconnect with a RLEC (as defined in the Transit Tariff), the RLEC should not be required to pay the CLEC or CMRS agent's costs. In that situation, the CLEC or CMRS has chosen where to locate its switch and to use BellSouth to interconnect with the RLEC.

6 If the CLEC or CMRS carrier interconnected directly with the RLEC, the costs of the traffic in both directions beyond the RLEC's network would be the CLEC or CMRS carrier's expense, just as the costs of traffic in both directions on the RLEC side of the point of interconnection ("POI") is the RLEC's expense. The only compensation that the CLEC/CMRS should receive for terminating RLEC-to-CLEC/CMRS traffic is reciprocal compensation, if any. The CLEC is not entitled to receive the additional benefit of forcing the RLEC to bear the costs of transit from the POI on the RLEC's network to the CLEC's switch, wherever it may be located. In other words, the CLEC and/or CMRS should not be permitted to force the RLEC to

pay costs under indirect interconnection that the CLEC and/or CMRS cannot pass off to the RLEC with direct interconnection. The CLEC and/or CMRS has chosen, presumably for economic reasons, where to locate its switch, and the costs of transport should be its to bear.

7 The obligation to provide transit for traffic over a local exchange carrier's ("LEC's") network is governed by 47 U.S.C. § 251 and not properly included in a tariff. 47 U.S.C. § 251(c)(2) requires interconnection at a technically feasible POI on the RLEC's network. BellSouth's proposal would establish a POI at the CLEC's switch for RLEC-to-CLEC/CMRS traffic by requiring the RLEC to pay BellSouth's tandem and transit costs. Under the Telecommunications Act of 1996 ("The Act"), the only amount the RLEC should pay for RLEC-to-CLEC/CMRS traffic is reciprocal compensation, which must be established by agreement or arbitration between the RLEC and the CLEC/CMRS, not by a BellSouth tariff.

8. The New York Public Service Commission faced with issue for CLEC EAS traffic and ruled that the CLEC is responsible for the Bell Company's charges in both directions beyond the Bell/RLEC meet point (copy attached)

WHEREFORE, Citizens asks that the TRA grant Citizens' petition to intervene, suspend the Transit Tariff, and convene a contested case to address the issues raised herein

Respectfully submitted,



Guilford F. Thornton (No. 14508)  
Charles W. Cook, III (No. 14274)  
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Attorneys for Citizens Telecommunications  
Company of Tennessee, LLC d/b/a  
Frontier Communications of Tennessee

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing was served by U S First Class mail, postage prepaid on this the 4<sup>th</sup> day of January, 2005 to:

Edward Phillips  
Sprint Communications Company, L P  
Spring Spectrum, L P  
14111 Capital Blvd  
Wake Forest, NC 27587

Guy Hicks  
Joelle J Phillips  
BellSouth Telecommunications, Inc  
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Suite 2101  
Nashville, TN 37201

Henry Walker  
Boult, Cummings, Conners & Berry PLC  
414 Union St., #1600  
Nashville, TN 37219

William T Ramsey  
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One Nashville Place, Suite 1900  
150 Fourth Avenue North  
Nashville, TN 37219

  
\_\_\_\_\_  
Charles W Cook, III

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 21, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 00-C-0789 - Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies -- PETITIONS FOR REHEARING TO THE COMMISSION'S DECEMBER 22, 2000 ORDER FILED BY AT&T, CABLEVISION, RCN, ET. AL., AND THE SMALL COMPANY GROUP

CASE 01-C-0181 - Verizon New York Inc. has filed tariff revisions to introduce rates and regulations for intraLATA local traffic between the company's meet point with an ITC and the company's point of interconnection with a CLEC.

ORDER DENYING PETITIONS FOR REHEARING,  
CLARIFYING NXX ORDER, AND  
AUTHORIZING PERMANENT RATES

(Issued and Effective September 7, 2001)

BACKGROUND

Following a proceeding instituted in response to complaints by customers that certain calls either failed to reach their destination or were unexpectedly billed at toll rates, we issued an Order<sup>1</sup> (NXX Order) establishing requirements for the exchange of local traffic between independent telephone companies and (Independents) and competitive local exchange

<sup>1</sup> Case 00-C-0789 - Order Establishing Requirements for the Exchange of Local Traffic, (Issued December 22, 2000).

carriers (CLECs). We determined that calls terminating to customers located beyond the local calling area of the designated NXX code were local calls.

In addition to determining that the calls in question should be local for the purpose of customer billing, the NXX Order required that: (1) CLECs enter into agreements establishing fundamental network and service arrangements prior to activating an NXX code; (2) compensation arrangements for these calls should be on a bill-and-keep basis; and (3) Verizon file a tariff for delivery of traffic via shared common transport from the Independent's meet-point to the Verizon tandem.

Petitions for rehearing were filed by AT&T Communications of New York, Inc and its affiliates AT&T Wireless Services, Inc., TC Systems, Inc., and ACC Corp (collectively AT&T); RCN Telecom of New York, Inc., Allegiance Telecom of New York, Inc. and Pac-West Telecom, Inc. (collectively RCN); and the Small Company Group.<sup>2</sup> In addition, Cablevision Lightpath, Inc. filed a Petition for Clarification. Reply comments in support of, or in opposition to, these petitions were filed by AT&T, Citizens Telecommunications of Company of New York, Inc., Frontier of Rochester, RCN, and Taconic Telephone Corp.

For the reasons set forth below, we deny the petitions for rehearing, clarify certain aspects of the NXX Order and find Verizon's rates for shared transport reasonable.

A. Treatment of calls as local

Position of parties

The Small Companies argued that the NXX Order was based on a false premise; namely, that central office codes assigned to exchanges in which no actual facilities or customers

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<sup>2</sup> The member companies of the Small Company Group appear on Appendix A.

exist (virtual exchanges) are "precisely" the same service as foreign exchange service. According to the Small Companies, foreign exchange design aspects, network and service provisioning, service revenues, costs, and usage levels differ fundamentally from virtual exchange service. The Small Companies noted that while traditional foreign exchange service is provisioned by end-office facilities in the existing Extended Area Service (EAS) exchange, CLECs using virtual central office codes do not use end-office facilities. In addition, the Small Companies argued that the Commission did not adequately address the issue of costs to be imposed on Independents as a result of local call determination.

In support of the Small Companies' argument, Frontier asserted that the CLEC use of codes in virtual code situations is Local Exchange Routing Guide (LERG) instructions for other carriers to use to route traffic on the CLEC's behalf, not true foreign exchange service. Frontier claimed that the NXX Order established a regime that would allow CLECs to open codes without having any facilities in place. Taconic also supported the Small Companies' position.

In reply to the Small Companies' petition, AT&T stated that the Small Companies reargued issues previously rejected. Calls are already rated based on rate center assignments of NXX codes of originating and terminating numbers and Small Companies do not currently distinguish between calls bound for incumbent local exchange carriers (ILEC) customers that may or may not be within the boundaries of EAS exchanges. AT&T argued that while the Small Companies may determine which rate centers its customers may call on a local basis, they may not dictate which calls to these rate centers are local or toll. Finally, AT&T regarded the Small Companies' alternative proposal to use 800-



like services for ISP-bound traffic to be tantamount to a tax on the Internet.

#### Discussion

The Small Companies defined foreign exchange based on technology used to complete the call. This definition requires that the terminating carrier have a physical presence in the exchange, and provide "dial tone" from a switch physically located in the exchange. Small Companies detailed technical and rate structure differences between what the incumbent telephone industry has called foreign exchange service and the service now offered by the CLECs. However, the NXX Order does not so narrowly define foreign exchange service based on call competition technology. Instead, it defines foreign exchange service operationally, i.e. making local service possible in an exchange where the customer has no physical presence.

We have previously recognized that the architecture of new entrant networks will differ from that of incumbents and stated that CLECs need not replicate the incumbent's service offerings, rate centers, or customer mix.<sup>3</sup> The Small Companies' foreign exchange definition does not take into account that CLEC networks do not and are not expected to mirror networks of incumbent carriers. The only standard that must be met is that established in the LERG which requires calls to be rated based on the NPA-NXX of the called number, not the

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<sup>3</sup> Case 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Opinion and Order Adopting Regulatory Framework (Issued May 22, 1996).

customer's physical location.<sup>4</sup> Petitioners have not presented any error of law or fact to challenge the underlying principle adopted by the Commission; i.e., non-discriminatory treatment of calls from Independent customers to incumbent foreign exchange numbers vis-a-vis calls to CLEC numbers with virtual NXXs. The petitions for rehearing regarding this issued are denied.

The notice seeking comments in this proceeding asked whether any unique costs would be incurred by originating carriers (emphasis supplied). Certainly, it was anticipated that some costs would be incurred in order to connect with a CLEC at the meet point. These connection costs, however, are not unique. For instance, if an Internet Service Provider (ISP) were to enter a Verizon exchange where an Independent had local calling, the Independent would, in all likelihood, have to augment its facilities to carry the additional traffic. However, these are costs that have already been assumed in order to handle Internet traffic. The NXX Order notes that no facts were presented to support the Small Companies' claim. If an Independent determines that there is a need to seek cost recovery due to substantial costs imposed in meeting its common carrier obligations, traditional avenues for rate relief are available.

B. Connection requirements prior to activation of NXX code

Position of Parties

EAS arrangements allow customers of one ILEC to call customers of another ILEC on a local, rather than a toll, basis.

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<sup>4</sup> According to Telecordia, the LERG Routing Guide is primarily designed to be used for (1) routing of interLATA calls by interexchange carriers, (2) providing information on the local environment for the numerous carriers involved in the local arena, (emphasis added) and (3) any other company needing information about the network, numbering and other data in the product.

AT&T argued that these arrangements should be competitively neutral and economically efficient. AT&T claimed that the NXX Order did not address the possible anti-competitive consequences of ILEC refusal to allow CLEC participation in existing EAS arrangements. AT&T urged the Commission to require that EAS arrangements either be open to all carriers or be eliminated.

AT&T noted that while the NXX Order required CLECs to reach interconnection agreements with all incumbents, including Independents, before activating new NXX codes, no such restrictions were in place for incumbents requesting new codes. AT&T interpreted the NXX Order as not requiring Independents and major incumbents to negotiate interconnection agreements with CLECs. AT&T requested (1) an interim process that would allow CLECs to opt into existing calling arrangements, and (2) a default agreement for all CLECs already holding NXX codes in local calling areas.

RCN argued that the NXX Order could have a potentially detrimental effect on the development of local competition since it might be read as giving Independents veto power over when and where CLECs decide to compete by refusing to enter into an interconnection agreement with the CLEC. RCN claimed the NXX Order violated a CLEC's right to interconnect its network indirectly with an Independent's network. According to RCN, interconnections should be allowed based upon the most efficient economic and technical choices. RCN argued that the NXX Order denied CLECs their choice of interconnection by imposing a direct trunking requirement.

In reply, Verizon stated that interconnection is required as the result of CLECs not building facilities in the areas where they have NXX codes. Independents should not be required to extend their facilities beyond their service areas according to Verizon, and Independents should also not be

required to provide connecting facilities. Verizon maintained that CLECs should be responsible for deploying or leasing facilities that connect CLEC networks to the Independents.

Discussion

We previously determined that a service arrangement between Independents and CLECs is essential to ensure that these calls are handled correctly and that calls do not "fall on the floor". Independents' responsibility is limited to delivering traffic to their own service area borders, therefore, CLECs must assume the obligation of delivery beyond the Independent service area border in order to allow efficient interconnection to Independents. CLECs must either provide their own interconnection facilities or lease facilities to the meet point. Shared transport is permitted for low volume traffic (i.e., less than the T-1 level) and parties are free to negotiate a different level. Because CLECs are permitted to negotiate and choose whatever interconnection method is most technically and economically advantageous, the basis for RCN's petition is not valid and its petition for rehearing is denied.

AT&T's point that CLECs should be allowed to opt into any existing EAS agreement between two incumbent carriers (e.g., Verizon and an Independent) to the extent such agreements exist, is valid, however. The NXX Order should be clarified to reflect that and to underscore that opting into an existing EAS agreement does not obviate CLEC responsibility for facilities between its switch and the Independent. We clarify that the interconnection arrangement requirement can be satisfied by the carrier making representations to the Department that an arrangement is or will be in place that will permit calls to be handled on a local basis by an Independent's customers.

C. Bill-and-Keep Arrangements

Position of the Parties

AT&T and RCN petitioned for rehearing on the grounds that the decision to treat these calls under a "bill and keep" arrangement violated FCC rules and reversed Commission policy. RCN argued that the main rationale given for a bill-and-keep arrangement -- that CLECs are not located within the same geographic territory as an Independent and, therefore, there is no direct competition with the Independent for local customers and treatment of the call as local for the purpose of reciprocal compensation does not appear warranted -- does not comport with the requirements of the Telecommunications Act of 1996 and federal regulations. RCN claimed that under FCC rules, bill-and-keep is appropriate only if traffic exchanged is of equal volume and expected to remain so. RCN maintained that because there was no finding that the traffic between Independents and CLECs was roughly in balance, the Commission erred as a matter of law by imposing bill-and-keep on the Independents and CLECs.<sup>5</sup>

In addition, RCN stated that the Commission violated federal law and prior Commission rulings<sup>6</sup> by imposing bill-and-keep based on whether a CLEC is directly competing with an incumbent and/or has a physical presence in the "same territory." RCN argued that the FCC did not authorize these additional Commission criteria and under previous rulings local traffic was eligible for reciprocal compensation.

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<sup>5</sup> For its part, RCN noted that it currently exchanges traffic with Independents on a de facto bill-and-keep basis because RCN does not receive enough traffic to warrant other arrangements.

<sup>6</sup> Case 99-C-0529 - Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, (Issued February 1, 2001)

AT&T argued that the Commission made two substantial departures from the reciprocal compensation policy established in Opinion 99-10<sup>7</sup>; (1) calls, although rated as local, would not be treated as such for reciprocal compensation purposes, and (2) intermediary ILECs, such as Verizon, were absolved from paying for the completion of the calls. AT&T argued that the NXX Order disrupted policy established in Opinion 99-10, changed the default compensation scheme and removed a bargaining tool in negotiations with other carriers. AT&T concluded that no sound reason exists to disturb a policy that was intended to stimulate facilities-based competition with respect to CLEC-independent local traffic. AT&T argued that the Commission should not have revised the policy without giving all interested parties in the Reciprocal Compensation proceeding notice and opportunity to be heard.

In reply, the Small Companies stated that the Commission's decision was consistent with applicable FCC rulings and prior Commission decisions since FCC rules allow states to determine local service areas and consequently, when reciprocal compensation should apply. In addition, the Small Companies noted that the Commission's Reciprocal Compensation Order never addressed the geographic area within which the Act's reciprocal compensation construct would apply.

Verizon supported the finding in the NXX Order that it not be required to pay compensation for termination of calls where Verizon acts as third party transit service between an Independent and CLEC.

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<sup>7</sup> Case 99-C-0529 - Opinion and Order Concerning Reciprocal Compensation, (Issued August 26, 1999).

Discussion

The calls in question closely resemble those that are currently handled in local calling arrangements between the Independents and Verizon, arrangements handled on a bill-and-keep basis. In the NXX Order, the Commission directed carriers to enter into interconnection arrangements and indicated that bill-and-keep arrangements appear to best balance the interests at stake. The calls at issue do not appear to terminate for reciprocal compensation purposes until they reach the carrier's switch, which is outside the local area. However, if a different arrangement is presented as a result of the interconnection arrangement process, the Commission may consider the appropriateness of bill-and-keep for that situation.

We note that on April 27, 2001, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPR) regarding development of a unified intercarrier compensation regime.<sup>8</sup> As part of the NPR, the FCC sought comment regarding inappropriate use of NXX codes to collect reciprocal compensation. Although the NXX Order determined that no reciprocal compensation should apply to calls for traffic an ILEC transports outside the local calling area, the FCC also sought comment in the NPR on: (1) CLEC entitlement to use NXX codes, (2) transport obligations of the originating LEC, and (3) NXX-deploying CLEC obligations to provide transport from central offices associated with NXX codes. In the event that federal rules are modified so that they conflict with Commission Orders, the determination regarding NXX codes and related transport obligations will be re-examined.

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<sup>8</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime, FCC 01-132, (rel. April 27, 2001)

D. Other issues

1. Applicability of NXX Order to existing interconnection agreements

Cablevision asked for clarification regarding the NXX Order's effect on existing interconnection agreements

Disruption of existing interconnection agreements between CLECs and Verizon was never intended. Therefore, we grant Cablevision's request for clarification in this regard and state that the NXX Order has no effect on existing interconnection arrangements.

2. Discriminatory numbering assignment practices

AT&T and RCN both argued that restricting code assignments only to CLECs is a violation of FCC guidelines. They noted that Independents and others remain free to activate new NXX codes in rate centers with EAS calling without having to establish EAS calling arrangements with CLECs that also serve customers in the same areas

Petitioners raise a valid issue The genesis of requiring interconnection arrangements between Independents and CLECs before activating an NXX code was to ensure that calls would be properly completed before numbers were placed in service. A reciprocal policy applicable to all numbering resources is appropriate in order to be consistent with federal guidelines. Therefore, we broaden the application of the requirement that interconnection agreements be in place before code activation to all carriers, not just CLECs

3. Time frames to complete interconnection agreements

No time frames for the completion of these agreements were specified in the NXX Order. This has had the unintended consequence of removing motivation to negotiate arrangements. In order to assure compliance with the NXX Order, interconnection agreements are required to be in place for



existing codes within 120 days from the release of this order and these agreements must be filed with the Secretary of the Commission. This requirement should address a concern expressed by CLECs regarding an Independent carrier's unwillingness to negotiate. We also clarify that a traffic exchange agreement is sufficient to satisfy the requirement of an interconnection arrangement.

4. Verizon Tariff for Shared Transport

Verizon was directed to file a tariff for shared transport to enable the delivery of traffic from the Independent's meet point to the Verizon tandem.<sup>9</sup> Verizon's tariff allows for call carriage between an Independent meet point and Verizon's point of interconnection with a CLEC. Calls will be carried only when the total monthly call volume does not exceed one DS1 level or 180,000 minutes of use per month. CLECs will be charged for completing these calls under the switched access service tariff, with various per minute and per mile charges applying.

AT&T noted, in the only substantive comments made,<sup>10</sup> that Verizon will charge CLECs a price equal to Verizon's own terminating access charge for delivering Independent-originating traffic to CLECs for termination. Further, AT&T noted that Verizon does not charge Independents for delivering calls between Independents and Verizon on EAS routes. Finally, AT&T stated that its existing interconnection agreement with Verizon offered more favorable treatment of these calls.

AT&T's comparison between Independent-CLEC traffic and existing Independent-Verizon arrangements failed to note that,

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<sup>9</sup> Case 99-C-0529 - Opinion and Order Concerning Reciprocal Compensation, (Issued August 26, 1999).

<sup>10</sup> The Small Companies requested that action on the tariff be deferred pending resolution of the Petition for Rehearing.

in the Independent-CLEC traffic arrangements, Verizon would be acting as a third party, but in Independent-Verizon arrangements, Verizon would be terminating calls to its own customers. Therefore, a basis for different treatment exists. In addition, as previously discussed, it was not staff's intent to disturb existing interconnection agreements. If AT&T believes it is entitled to more favorable treatment, it should pursue this issue with Verizon.

The rates proposed by Verizon are reasonable and will go into effect on a permanent basis.

The Commission orders:

1. The petitions for rehearing are denied.
2. CLECs may opt into existing extended area service (EAS) arrangements offered between incumbent carriers.
3. Interconnection agreements for existing codes must be filed with the Secretary of the Commission within 120 days of the release of this order and thereafter all interconnection agreements must be filed with the Secretary of the Commission.
4. The tariff schedule previously filed by Verizon New York, Inc., shown on Appendix B, shall become effective on a permanent basis with issuance of this order.
5. These proceedings are continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary

## Appendix A

### SMALL COMPANY GROUP

Armstrong Telephone Company  
Berkshire Telephone Company  
Cassadaga Telephone Corporation  
Champlain Telephone Company  
Chautauqua & Erie Telephone Corporation  
Chazy & Westport Telephone Corporation  
Citizens Telephone Company of Hammond  
Crown Point Telephone Corporation  
Delhi Telephone Company  
Dunkirk & Fredonia Telephone Company  
Edwards Telephone Company  
Empire Telephone Corporation  
Fishers Island Telephone Company  
Germantown Telephone Company  
Hancock Telephone Company  
Margaretville Telephone Company  
Middleburgh Telephone Company  
Newport Telephone Company  
Nicholville Telephone Company  
Ontario Telephone company  
Oriskany Falls Telephone Corporation  
Pattersonville Telephone Company  
Port Byron Telephone Company  
State Telephone Company  
TDS Telecom of Deposit  
Township Telephone Company  
Trumansburg Home Telephone Company  
Vernon Telephone Company

## Appendix B

### ADMINISTRATIVE DETAILS

Filed by: Verizon New, Inc

Revisions to: P.S.C. NY No 8 - Communications

Section 1

First Revised Page No. 4

Section 6

First Revised Page No. 5

Original Page No. 5.1

First Revised Page No. 6

Section 35

First Revised Page No 9

Original Page No. 9.1

Issued: February 5, 2001      Effective: March 7, 2001

Revisions to: P.S.C. No. 8 - Communications

Section 1

Second Revised Page No. 4

Section 6

Second Revised Page No. 5

First Revised Page No. 5.1

Second Revised Page No. 6

Section 35

Second Revised Page No. 9

First Revised Page No. 9 1

Issued March 14, 2001      Effective: March 15, 2001.

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 11, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 00-C-0789 - Proceeding on Motion of the Commission  
Pursuant to Section 97(2) of the Public  
Service Law to Institute an Omnibus  
Proceeding to Investigate the Interconnection  
Arrangements Between Telephone Companies

ORDER ESTABLISHING REQUIREMENTS FOR  
THE EXCHANGE OF LOCAL TRAFFIC

(Issued and Effective December 22, 2000)

BY THE COMMISSION:

This proceeding was initiated to resolve a dispute by  
carriers regarding treatment of competitive local exchange  
carrier (CLEC) telephone numbers assigned to a central office  
(NXX) code<sup>1</sup> within an established local calling area, but used by  
customers located beyond the local calling area of the  
designated NXX code.

BACKGROUND

Department Staff (staff) investigated complaints by  
customers of independent telephone companies (Independents)

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<sup>1</sup> In a seven digit local phone number, the first three digits  
identify the specific telephone company central office which  
serves that number.

regarding calls that failed to reach their destination or were unexpectedly billed at toll rates. Staff found that in nearly all of the situations examined, the calls in question had been made to an Internet service provider (ISP) served from a CLEC network. In all instances, both the CLEC switch and the ISP customer for whom the calls were destined were located outside the Independent's local service area. The CLEC used an NXX code within the Independent's established local calling area to provide locally-rated calling to customers located outside the geographic area associated with the assigned NXX code.

Calls failed to reach their destination because no provision had been made for physical interconnection between CLECs and Independents. Toll charges were imposed when the Independent's only available transmission path for routing the call was the toll network. In all cases, Staff found that no interconnection arrangements/agreements had been made between the CLECs and the Independents to handle these calls, unlike the situation between Independents and Verizon New York, Inc. (Verizon) where transport arrangements are in place to handle calls to a customer outside the geographic area associated with the assigned NXX.

After Staff-facilitated negotiations between the Independents and CLECs reached impasse, this proceeding was begun and on May 16, 2000 a Notice Inviting Comments was issued. The Notice sought comments regarding these questions:

- (1) How to treat calls from telephone exchanges to CLEC phone numbers within that company's local calling area?
- (2) Whether there were any unique costs incurred by originating carriers who transported calls to a requesting CLEC?
- (3) Whether there were any unique costs incurred when a third party transported calls between the originating carrier and the requesting CLEC and

if there were, how such costs should be compensated?

- (4) What generic principles should be established as guidance for interconnection agreements and inter-carrier compensation?

Comments<sup>2</sup> and reply comments<sup>3</sup> were filed. A Petition for Clarification or Rehearing was also filed by the Independents' Small Company Group (Small Companies).<sup>4</sup> AT&T Communications of New York and ACC Corp. responded. A summary of comments submitted appears in Appendix D.

### DISCUSSION

#### Rating of Calls

According to the Small Companies, a customer should not be considered "within" a local calling area if that customer is actually located in a different geographic area. Instead, the Small Companies recommended that CLECs be required to assign telephone numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is inter-exchange or local. CLECs maintained that the calls at issue in this proceeding should be considered local.

No Commission or FCC rules or policies prohibit a CLEC from activating a telephone number in an exchange where it has no physical presence. A CLEC may obtain an NXX or central office code in any existing rate center in order to establish a presence or a "footprint." These number assignments are then listed in the Local Exchange Routing Guide (Routing Guide),

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<sup>2</sup> Parties who filed comments are listed in Appendix A.

<sup>3</sup> Parties who filed reply comments are listed in Appendix B.

<sup>4</sup> The member Independents comprising the Small Company Group are listed in Appendix C.

recognized by the industry as the source for instructions on how to route calls, and other industry databases.

Currently, Independents rate customer calls to Verizon NXX numbers that are within the Independent's defined local calling area as local calls, even if the called party is outside the geographic area. Treating similar calls to a CLEC NXX code within the Independent's established local calling area as toll calls would be problematic. Therefore, calls to an NXX code within an established local calling area, but used by customers located outside the local calling area of the designated NXX code, will be considered local for rating purposes. This treatment assumes that the CLEC has established the appropriate fundamental network and service arrangements with all incumbent carriers consistent with the requirements of this Order.

Foreign exchange service also allows customers to obtain local service in an exchange where the customer has no physical presence. Independents do not treat calls destined for foreign exchange service any differently than calls terminating within the physical boundaries of the rate center. This is precisely the service CLECs offer their ISP customers, i.e., telephone numbers that can be called on a local basis in exchanges where the ISP has no physical presence, and this approach of rating those calls as local is consistent with the way Independents treat foreign exchange service calls.

Rating these calls as local, however, will not by itself ensure completed calls and proper billing. A fundamental network and service arrangement with Independents is an essential element in accomplishing that goal. Therefore, CLECs will be required to enter into an agreement establishing fundamental network and service arrangements prior to activating a code that can be accessed on a local basis by an Independent's



customer.<sup>5</sup> The FCC's Numbering Resource Optimization Order (NRO Order)<sup>6</sup> requires code applicants to provide the North American Numbering Plan Administrator (NANPA) with appropriate evidence that it will be ready to provide service within 60 days of the activation date. Responsibility for defining the readiness of facilities has been delegated by the FCC to the state commissions<sup>7</sup> and a pre-existing network and service arrangement will be an element of facilities readiness. Staff will advise NANPA that no NXX codes should be issued until the requesting CLEC has documented that it has interconnection agreements in place with all incumbent carriers within the local calling area where the code is sought. This requirement also applies to carriers seeking thousand-blocks in areas where pooling has begun.

#### Unique Routing Costs Incurred By Independent Companies

Independent companies connect to other incumbent carriers such as Verizon via two methods: (1) local trunks between their central office and the adjacent incumbent's central office, or (2) toll trunks to Verizon's tandem. In either case, the Independent's responsibility is limited to bringing its facilities to its boundary with the adjacent

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<sup>5</sup> The Central Office Code (NXX) Assignment Guidelines note that interconnection arrangements need to be in place prior to the activation of a code. Carriers may apply for a code six months prior to activation and may ask for an activation date no sooner than within sixty-six days of the request.

<sup>6</sup> Numbering Resource and Optimization Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7545 (March 2000).

<sup>7</sup> Id., para.97; Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding, CC Docket No. 99-200 (July 2000)

incumbent. The incumbent's responsibility is to provide connecting facilities within its territory to the boundary.

If the CLEC has facilities built out to the Independent's end office or has a meet-point somewhere in the Independent's territory, costs associated with completing calls from Independent exchanges to CLEC numbers within the Independent's local calling area should be, based on comments received, inconsequential. Nonetheless, Independents argued that the costs of originating and transporting these calls should be subject to access charges assessed to the carrier to which the call is delivered. The Independents were concerned that facilities could become overloaded and additional costs would be incurred to reinforce the network. However, no facts were provided to substantiate these concerns.

CLECs share in the obligation to allow efficient interconnection to the Independents. As previously noted, Independents are currently responsible for bringing meet-point facilities to their borders only, the long-standing arrangement in place today for trunks used in the provision of local calling between the Independents and Verizon. Because Independent responsibility is limited to delivering traffic to its service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet-point. With this obligation placed on CLECs, no unique costs would be incurred by the Independents in transporting calls to CLECs.

#### Third-Party Carriage of Independent-CLEC Calls

All parties agreed that a need exists for third-party transport of low volume calls between Independents and CLECs. CLECs stated that it would be inefficient for them to physically interconnect with Independents for the exchange of relatively

small amounts of traffic and proposed instead that calls between an Independent and a CLEC should be carried initially by an incumbent local exchange carrier (ILEC). Verizon, recognizing that it would most often be the third party involved in transporting such calls<sup>8</sup>, offered to provide existing services for the exchange of Independent-CLEC traffic in return for reasonable compensation. Tandem switching rates are available in Verizon's 914 tariff but rates for traffic carried via shared common transport and using tandem switching are not tariffed and need to be developed. Verizon will be directed to file a tariff for delivery of traffic from the Independent's meet point to the Verizon tandem. Interested parties will have an opportunity to comment on the proposed rates.

If call volumes between an Independent and a CLEC go beyond the small volume level, the CLEC should be responsible for establishing direct trunking. The DS-1 or T-1 level (24 voice grade channels) recommended by both Verizon and Time-Warner is a reasonable standard for triggering dedicated transport since it represents a standard unit of network capacity, is an efficient network design, and is generally acceptable to most parties. Parties may, of course, decide a different level is appropriate in a negotiated agreement. Rates for dedicated transport facilities are available in Verizon's 900 tariff.

Fiber Tech proposed that Independents offer a service similar to Verizon's Competitive Alternative Transport Terminal which allows competitive fiber providers a means to interconnect with CLECs collocated in a central office. While recognizing

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<sup>8</sup> Other Independents could also be involved in transporting these calls.

the competitive benefits offered by competitive fiber providers, Fiber Tech's proposal is beyond the scope of this proceeding.

#### Inter-Carrier Compensation

The Independents and Verizon currently have a "bill and keep"<sup>9</sup> arrangement for the exchange of local traffic. The calls at issue closely resemble those that are currently handled in local calling arrangements between the Independents and Verizon and, therefore, it is appropriate to handle these calls on the same "bill and keep" basis. In addition, since the CLEC is not located within the same geographic territory as the Independent and is not directly competing with the Independent for local customers, treatment of the call as local for the purpose of reciprocal compensation does not appear warranted. It should also be recognized that if a third-party ILEC (e.g., Verizon) transports a call between the originating and terminating carriers, it should have no responsibility to pay for its completion.

#### Procedural Matters

The Small Company Group petitioned for clarification or in the alternative, rehearing, of the May 5 Order based on (1) potential displacement of long-standing legal requirements and regulatory policies; (2) possible prejudgment of issues; (3) a potential due process violation absent rehearing and modification of the May 5 Order; and (4) potential violations of Commission and federal policy based on the statement in the May 5 Order "that carriers are reminded of their legal obligation to complete customer calls regardless of disputes over intercarrier

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<sup>9</sup> "Bill and keep" is a compensation method whereby each carrier is responsible for its own costs and recovers those costs from its end users.

compensation or call rating designations, and to bill such calls appropriately."

AT&T and ACC opposed the petition, arguing that there was no potential violation of Commission, federal, or public policy, and that the Commission's reminder of a carrier's legal obligation to complete calls was consistent with law.

The May 5 Order instituting this proceeding posited issues for comment which arose from previous discussions with Small Companies, AT&T, and ACC. A Notice Inviting Comment was issued on May 16, 2000 and parties were given the opportunity to submit initial and reply comments.

Clarification and/or rehearing is appropriate when ordered action is ambiguous or based on an error of fact or law. The Small Companies' petition was based not on Commission ordered action, but potential or possible action. At the time the Small Companies' petition was interposed, no action had been ordered. The statement regarding a common carrier's obligation to complete calls was merely a reminder of pre-existing duties. The Small Companies have failed to demonstrate any action that is ambiguous or erroneous. Therefore, the Small Companies' petition for clarification and/or rehearing was premature and is denied.

The Commission orders:

1. Prior to activating an NXX code that can be accessed on a local basis by an independent telephone company's customer, CLECs must enter into an arrangement establishing fundamental network and service arrangements. CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary. Independent Telephone Companies are responsible for delivering traffic to their own service area borders.

2. Calls to an NXX code that is within an established local calling area and that is used by customers located beyond the local calling area shall be rated as local for the purpose of customer billing.

3. Verizon New York, Inc. shall file with the Secretary (5 copies) a tariff for shared transport, as discussed in this Order, within 30 days of issuance of this Order and also serve the proposed tariff on parties on the service list for this case.

4. Parties will have 20 days from Verizon New York, Inc.'s filing to submit comments. Comments shall be served on parties on the service list for this case.

5. The Petition for clarification and/or rehearing is denied.

6. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary

APPENDIX A

INITIAL COMMENTS

ACC Corp. (ACC)  
AT&T Communications of New York, Inc. (AT&T)  
Adelphia Business Solutions, Inc. (Adelphia)  
Verizon-New York (Verizon, formerly Bell Atlantic)  
CTSI, Inc. (CTSI)  
Fiber Technologies, LLC (Fiber Tech)  
Focal Communications Corp. of New York, Inc. (Focal)  
Mid-Hudson Communications, Inc. (Mid-Hudson)  
Northland Networks, Ltd. (Northland)  
RCN Telecom Services of New York, Inc. (RCN)  
Small Company Group (Small Companies)  
TC Systems, Inc. (TC)  
Time-Warner Telecom, Inc. (Time Warner)  
WorldCom, Inc. (WorldCom)

APPENDIX B

REPLY COMMENTS

ACC Corp. (ACC)  
AT&T Communications of New York, Inc. (AT&T)  
Adelphia Business Solutions, Inc. (Adelphia)  
Bell Atlantic-New York (BA-NY or Bell Atlantic)  
CTSI, Inc. (CTSI)  
Cablevision Lightpath, Inc.  
Fiber Technologies, LLC (Fiber Tech)  
Focal Communications Corp. of New York, Inc. (Focal)  
Frontier Telephone of Rochester, Inc.  
Mid-Hudson Communications, Inc. (Mid-Hudson)  
Northland Networks, Ltd. (Northland)  
RCN Telecom Service of New York, Inc. (RCN)  
Small Company Group (Small Companies)  
TC Systems, Inc. (TC)  
Time-Warner Telecom, Inc. (Time-Warner)  
WorldCom, Inc. (WorldCom)



APPENDIX C

SMALL COMPANY GROUP

Armstrong Telephone Company  
Berkshire Telephone Company  
Cassadaga Telephone Corporation  
Champlain Telephone Company  
Chautauqua & Erie Telephone Corporation  
Chazy & Westport Telephone Corporation  
Citizens Telephone Company of Hammond  
Crown Point Telephone Corporation  
Delhi Telephone Company  
Dunkirk & Fredonia Telephone Company  
Edwards Telephone Company  
Empire Telephone Corporation  
Fishers Island Telephone Company  
Germantown Telephone Company  
Hancock Telephone Company  
Margaretville Telephone Company  
Middleburgh Telephone Company  
Newport Telephone Company  
Nicholville Telephone Company  
Ontario Telephone Company  
Oriskany Falls Telephone Corporation  
Pattersonville Telephone Company  
Port Byron Telephone Company  
State Telephone Company  
TDS Telecom of Deposit  
Township Telephone Company  
Trumansburg Home Telephone Company  
Vernon Telephone Company

## SUMMARY OF COMMENTS RECEIVED

1. Treatment of calls between telephone company exchanges to CLEC numbers assigned to NXX code within that company's local calling area.

The positions of the parties are generally divided between the incumbents (small companies and Verizon) and the CLECs.

The Small Companies argue that assigning a number associated with one geographic area to a customer located in a different geographic area does not mean that the customer should be considered "within" the local calling area associated with the number. As such, the Small Companies request that the Commission require all LECs to divulge their NPA-NXX code assignment practices and the manner in which telephone numbers are assigned to actual customers premises and LEC-designated rate centers. These arbitrary number assignment practices are not in keeping with the point-to-point nature of calls, according to the Small Companies. The Small Companies state that CLECs fail to recognize the rights of its members and that other carriers cannot be forced to concede to these arbitrary practices. The Small Companies recommend that CLECs be required to deploy numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is interexchange or local. Absent these practices, Small Companies state that calls to these numbers must be treated as interexchange/toll and subject to proper intrastate access changes. Finally, the Small Companies note that a continuation of the current practices will harm independent company customers.

Verizon posits that if a CLEC wants to have the call rated as a local call, the CLEC should either extend its

facilities into the local calling area or pay for transport of the call from the local area to its switch.<sup>1</sup>

CLEC respondents agree that the calls at issue in this proceeding should be considered local. Focal believes customer confusion would be encountered if these calls were treated as anything other than local. Likewise, Mid-Hudson and Northland, filing jointly, argue that independent customers, CLEC customers, and CLECs would all suffer severe and irreparable harm if the calls were not treated as local. AT&T states that there is no basis for discriminating between local and toll calls since independent companies make no distinction in routing and rating calls to incumbent customers (e.g., Verizon), some of which terminate to customers physically located outside of the local calling area, through the use of foreign exchange and remote call forwarding services.<sup>2</sup> Time-Warner concludes that the calls at issue are local; therefore, carriers should honor rate center assignments with their end-users. Worldcom states the physical location of the called party has no relevance on how a call is rated and billed. Worldcom also states that the location of calling and called parties is irrelevant and notes a California Commission ruling that determined the rating of calls is based on the NXX prefix of calling and called parties even if called party is located in different exchange.<sup>3</sup> RCN, CTSI, and Adelphia, filing jointly, state that there is no economic, technical or policy reason for different treatment to calls to the same rate center. RCN/CTSI/Adelphia note a Michigan PSC order rejecting the argument that an ISP did not have a physical presence in the exchange, that this was not a prerequisite under the tariff, and

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<sup>1</sup> A CLEC's switch may also be located some distance away from the exchange where the code is assigned.

<sup>2</sup> The Small Companies and Verizon have argued that foreign exchange calls are interexchange in nature and not an appropriate example.

<sup>3</sup> Order Instituting Rulemaking on the Commission's own Motion, Decision No. 99-09-029, Interim Opinion at 31-32 (California Public Utility Commission September 2, 1999).

that rating and routing need not be the same.<sup>1,2</sup> They also argue for FX service, claiming it is a time-honored service which allows businesses to expand their presence.

## 2. Unique Costs incurred by Independent companies

Almost all parties (with the exceptions of Verizon and the Small Companies) deem the costs associated with completing calls from independent exchanges to CLEC numbers within that company's local calling area to be inconsequential. This includes those calls that must be completed to an end user located outside of that local exchange.

However, Small Companies assert that these types of calls are interexchange calls, and that the costs of originating and transporting these calls should be subject to access charges which, in turn, should be assessed to the carrier to which the call is delivered. The Small Companies state that these calls are toll calls that will be converted to lower-priced local calls by not assessing an additional charge for these types of calls. The Small Companies argue that their local facilities may become overloaded as the demand for these types of calls increase, and that independent companies will incur additional costs to reinforce its system. The Small Companies argue that, while a CLEC can request interconnection, a CLEC cannot declare or demand that other carriers accommodate the CLEC's practices.

Verizon states that third party costs would occur if it were to carry traffic between an independent and a CLEC, and that Verizon would expect full recovery of any costs. Verizon argues that it should be compensated for the use of its network.

Time-Warner states that it is possible that some additional costs may be incurred by independent companies

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<sup>1</sup> In the Matter of the Complaint of Glenda Bierman against Centurytel of Michigan, Inc d/b/a/ CenturyTel, April 12, 1999.

<sup>2</sup> In reply comments, the Small Companies notes an order issued by the Maine Commission which reclaimed a CLEC's NXX codes that did not have facilities nor was serving customers in the exchange where the codes were assigned.

depending on 1) call volumes, 2) location of the interconnection points and 3) current capacity of the system. However, Time-Warner also states if the CLEC has built out to the independent's end office or has a meet-point somewhere in the Independent Carrier's territory, there should be few recurring costs.

WorldCom claims that each carrier has its own costs for originating telecommunications, and that generally the recovery of costs associated with originating calls are the responsibility of the originating carrier. RCN/CTSI/Adelphia believe that no additional costs would be incurred if traffic were routed the same way for both Verizon and CLEC customers.

Focal states that some costs to build out the network may be necessary, but that these costs should not be extraordinary. Mid-Hudson/Northland note that it makes no difference to the independent whether its customers dial the "phantom NXX" or any other NXX; the costs for handling each call are the same. All calls from the independent to the CLEC NXX code can be delivered in the same manner at the same cost to the independent. Accordingly, the charge to the caller should be the same.

### 3. Third-party carriage of independent-CLEC calls

AT&T, Focal, Mid-Hudson/Northland, RCN/CTSI/Adelphia, Time Warner, and Worldcom basically agree that it would be inefficient for them to physically interconnect with independents for the exchange of relatively small amounts of traffic immediately. Calls between an independent and a CLEC should, therefore, be initially carried by a third-party ILEC, most often Verizon. The parties offer comments on shared and dedicated transport, the costs incurred and reimbursement of the third-party carrier for those costs.

Verizon, recognizing that it would most often be the third party involved in such calls<sup>1</sup>, offers to provide existing services and to develop new services for the exchange of

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<sup>1</sup> Other larger independents could be involved in these calls.

independent-CLEC traffic. Fiber Tech states that it intends to enter the market as a competitive fiber provider. AT&T holds that an Incumbent local exchange carrier (ILEC) must provide shared transport as an Unbundled Network Element (UNE) on its network between its meet point with a CLEC and its meet point on an independent-ILEC EAS trunk group<sup>1</sup>. Focal states that ILECs should act as aggregators of traffic and be prohibited from limiting use of interconnected trunks to independents. Mid-Hudson/Northland want ILECs to offer both shared and dedicated transport. RCN/CTSI/Adelphia feel that independent-CLEC traffic flow will be minimal and exchanged via ILEC facilities. Time-Warner and WorldCom both indicate it is more efficient for the ILEC to transit relatively low volumes of independent-CLEC traffic. The Small Companies state that calls terminating beyond the local calling area are actually interexchange and that "legitimate" local calling arrangements involving third-party carriers should remain subject to negotiation among the parties.

Some parties recommend or suggest that limits be placed on shared transport. Verizon and Time-Warner expect that dedicated facilities are appropriate for traffic requiring one DS-1 (T-1)<sup>2</sup>. Focal recommends that 200,000 minutes of use per month for two consecutive months should require a CLEC to establish its own direct trunk group connection with an independent. Focal also states that CLECs will evaluate whether or not to build direct trunks if ILECs are allowed to increase their shared transport rates for legitimate costs such as tandem additions. RCN/CTSI/Adelphia want the independent-CLEC traffic threshold triggering a direct connection to be set by the parties.

Verizon states that rates for the type of shared common transport used for independent-CLEC calls are not tariffed and

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<sup>1</sup> Verizon replies that EAS routes have been constructed to carry traffic between independent and ILEC end offices and do not extend to tandems.

<sup>2</sup> Verizon New York's rates for dedicated transport are available in its P.S.C. 900 Tariff.

would have to be developed<sup>1</sup>. Focal states that the compensation level should be at the ILEC's existing transit rates, adjustable for additional costs incurred to meet traffic requirements. AT&T, citing the FCC's UNE Remand Order<sup>2</sup>, maintains that shared transport is a UNE and should be provided at total element long run incremental cost (TELRIC). Mid-Hudson/Northland recognize the need for tandem switching costs but do not address common transport. RCN/CTSI/Adelphia would compensate the ILEC at agreed-upon or Commission-approved rates provided the ILEC has demonstrated it has incurred incremental costs carrying independent-CLEC traffic. Time-Warner would compensate an ILEC with a network capable of exchanging traffic with an independent at that ILEC's established rate. If the independent does not subtend the ILEC's tandem, Time-Warner would have the Commission establish a default point of interconnection from which the CLEC could purchase transport from either the independent or ILEC for no greater than the ILEC's UNE price for interoffice transport. WorldCom would compensate the ILEC at its TELRIC-based transit charge. Cablevision urges that ILECs not be allowed to impose interexchange access fees or toll charges. The Small Companies would have the ILEC charge either for interexchange access or at a negotiated EAS rate.

AT&T, Focal, Time-Warner would have the CLEC pay the ILEC for transporting calls to it. Mid-Hudson/Northland would have the originating carrier pay the ILEC to deliver a call to the receiving carrier's point of interconnection with the ILEC. WorldCom would also have the originating carrier pay the ILEC's TELRIC-based charge. RCN/CTSI/Adelphia do not specify who should pay the ILEC, indicating only that, in the absence of an agreement, cost recovery over a de minimus amount should be in accordance with Commission guidelines. Verizon expects the party requesting dedicated transport to pay for it. Verizon stresses

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<sup>1</sup> Verizon New York's rates for tandem switching that do not include common transport are available in its P.S.C. 914 Tariff.

<sup>2</sup> CC Docket No. 96-98, FCC 99-238, Third Report and Order released November 5, 1999.

that it is not the originating carrier for independent-CLEC traffic and should not have to pay reciprocal compensation for its termination.

#### 4. Intercarrier compensation

In its Notice Inviting Comments, the Commission asked what generic principles regarding compensation should be established as guidance for interconnection agreements between carriers. The independent companies and Verizon currently have a "bill and keep" arrangement for exchange of local traffic. CLECs and Verizon, on the other hand, have reciprocal compensation agreements in which each carrier pays the other to complete calls.

The Small Companies state that their member companies are willing to discuss terms and conditions for local calling if customers are physically located in neighboring exchanges but opine that most traffic discussed in this proceeding is not "local". The Small Companies also note that bilateral agreements between Verizon and CLECs cannot be forced on small company group members.<sup>1</sup> Rather, the calls in question are interexchange in nature and access charges should apply to these calls. Verizon is concerned that agreements should specify who is responsible for new and additional transport facilities and services in third-party circumstances. AT&T and Focal state that the Commission must make sure that compensation is not discriminatory for calls terminating in same exchange. Similarly, Worldcom and Mid-Hudson/Northland note that the provisions of the 1996 Telecom Act are the governing policy, which dictates that each party should pay to terminate calls; therefore, the traffic should be treated no differently than Verizon to CLEC traffic. Mid-Hudson/Northland also note that CLECs, to date, have refrained from collecting reciprocal compensation from independents even though CLECs are entitled to it under S251 (b) (5) of Act. Time-

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<sup>1</sup> Verizon's interconnection agreements with CLECs allow for meet-point billing at Verizon's tandem within a LATA.



Warner is most concerned that disputes over compensation should not interfere with call completion. Several parties address the level of traffic and the need for compensation.

RCN/CTSI/Adelphia state that bill and keep should be used if traffic is balanced; otherwise, each carrier should bill the other for terminating traffic. However, if traffic is negligible, no payment should be required. Focal suggests that interconnection agreements not be require until the traffic reaches a threshold level, which it recommends to be 200,000 minutes per month for two consecutive months. Focal also notes that the independent company and CLEC should determine a technically feasible point of interconnection. Cablevision states that outcome of this proceeding should not limit CLEC's ability to design and operate an efficient network.